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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/760,786	01/17/2001	Hirokazu Sakai	201989US3	4950
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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
			EXAMINER DEMILLE, DANTON D	
			ART UNIT 3764	PAPER NUMBER

DATE MAILED: 12/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/760,786

Applicant(s)

SAKAI ET AL.

Examiner

Danton DeMille

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8 and 10-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8 and 10-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____

DETAILED ACTION***Claim Rejections - 35 USC § 112***

1. **Claims 1, 3-8, 10-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.** It is not clear what applicant is attempting with the new language added. The language recites that the imaginary concave plane has edge portions. It is not clear how an imaginary concave plane has edge portions. It is a continuous surface that doesn't appear to have edges. It is also not clear how these edge portions then "gradually decrease height(sic)". How does edge portions decrease in height? It is not clear how edge portions have a height. Moreover, it is not clear how these edge portions have a midpoint. How does the edge portions have a length? The claim already recites the apices of the projections form an imaginary concave plane. It is not clear how this further defines the invention.

Claim Rejections - 35 USC § 103

2. **Claims 1, 4-8, 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aichinger (German 0096102) in view of Harris and Van Sant.**

3. Aichinger teaches the heart of applicant's invention. The only difference is the inclusion of an additional cover within the outer cover of the container. The outer cover of Aichinger detachably attaches to the upper portion of the body over said opening. There is no unobviousness to provide an additional cover over the container opening so that the contents doesn't spill when the outer cover is removed. Harris teaches just such a convention. Figure 3 shows a container with an outer cover detachably attached to the upper portion of the body without an inner cover. Figure 2 teaches the provision of including an inner cover removably

covering the container opening. Obviously you can have it either way. With an additional cover or without depending on the intended use. It would have been obvious to one of ordinary skill in the art to modify Aichinger to include an inner cover over the container opening as taught by Harris to prevent the contents from spilling when the outer cover is removed and used separately.

4. There is also no unobviousness to the shape of the projections. The shape of the projections can be modified to better conform to the shape of the human body as desired. Van Sant teaches that the height of the projections can decrease toward the center portion to form an imaginary concave plane, page 2, lines 25-29, "The projections 14 do not stand up as high as the projections 15, thus affording substantially concave points of contact adapted to more or less conform to the contour of the head." It would have been obvious to one of ordinary skill in the art to further modify Aichinger to shape the ends of the projections to be concave as taught by Van Sant to better conform the surface of the projections to the shape of the human body. The shampoo container of the instant invention and the prior art are applying the device to the head of the user. The head is convex and to shape the ends of the projections to conform to the convex shape of the head would have been an obvious to one of ordinary skill in the art as exemplified by Van Sant.

5. Regarding claims 5-7, 12-14, specific dimensions and compositions of the projections are well within the realm of the artisan of ordinary skill dependent on practical considerations of intended use. Conventional rubbers, densities or dimensions such as that claimed are obvious well known variables in the construction of the device.

6. **Claim 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Richardson. Richardson**

teaches the convention of providing a cover over the massaging projection to protect them from damage or being soiled for example. It would have been obvious to one of ordinary skill in the art to further modify Aichinger to include a cover over the projections as taught by Richardson to cover the projections from damage or being soiled.

7. **Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 8 above, and further in view of Gueret.** Aichinger and Richardson appear silent with regard to the Shore hardness of the projections because such is well within the realm of the artisan of ordinary skill. A Shore hardness of 20 to 80 is a pretty wide range. Obviously the hardness can fall within a wide range of Shore hardness. Gueret teaches massage projections that have a Shore hardness of 35. This would appear to fall within the claimed range. It would have been obvious to one of ordinary skill in the art to further modify Aichinger to use a Shore hardness of 35 as taught by Gueret to provide the projections with the proper amount of flexure to the skin of the user to affect a proper massage.

8. **Claims 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aichinger (German 0096102) in view of Harris and further in view of Homma et al. and Van Sant.** Using a conventional shampoo such as one that includes a cationic polymer, nonionic surface active agent, alcohol and water would have been an obvious provision in Aichinger or Harris. Homma teaches such a shampoo composition that includes 0.05 to 2.5 % cationic polymer (abstract), nonionic surface active agents (column 2, lines 4-5), alcohol (column 5, line 14) and the balance with water. It would have been obvious to one of ordinary skill in the art to modify shampoo container as set forth in claim 1 with the shampoo itself such as taught by Homma to complete the shampoo container.

9. As noted above, there is also no unobviousness to the shape of the projections. The shape of the projections can be modified to better conform to the shape of the human body. Van Sant teaches that the height of the projections can decrease toward the center portion to form an imaginary concave plane, page 2, lines 25-29. It would have been obvious to one of ordinary skill in the art to further modify Aichinger to shape the ends of the projections to be concave as taught by Van Sant to better conform the surface of the projections to the shape of the human body. The shampoo container of the instant invention and the prior art are applying the device to the head of the user. The head is concave and to shape the ends of the projections to conform to the concave shape of the head would have been an obvious to one of ordinary skill in the art as exemplified by Van Sant.

Response to Arguments

10. Applicant's arguments with respect to claims 1, 3-8, 10-22 have been considered but are moot in view of the new ground(s) of rejection.

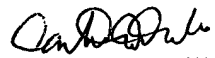
11. It is not clear how applicant can disregard the teaching of Van Sant. Applicant argues that Van Sant does not teach "a cover detachably attached to the upper portion of the body over said opening ..., wherein the plurality of projections gradually decrease height toward a center portion of the flat side surface covered with the plurality of projections such that apices of the plurality of projections form an imaginary concave plane". Van Sant clearly teaches a cover 7 detachably attached to the upper portion of the body 1 over said opening. The plurality of projections 14, 15 gradually decrease in height toward the center forming an imaginary concave plane. This is explicitly taught by Van Sant on page 2, lines 25-29, "The projections 14 do not stand up as high as the projections 15, thus affording substantially concave points of contact

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adapted to more or less conform to the contour of the head.” If applicant is arguing that the projections do not “gradually” decrease in height, this is purely a matter of interpretation, a matter of degree and a matter of how many projections are used. Clearly if Van Sant were to use more projections such as another row of projections then the concave surface would be more “gradual”. The intent and purpose of the different height of the projections is to create an imaginary concave surface for conforming to the head of the user. More projections would make the concave surface more gradual. Van Sant is not the primary reference. Van Sant is merely a teaching of the conventional arrangement of the projections. Van Sant is not intended to teach everything. Aichinger is the primary reference. Since it is well known to shape the projections to have a concave surface as taught by Van Sant, applying this convention to Aichinger would result in projections with a concave surface that would be “gradual”.

12. Individually attacking the other references as not teaching this disputed language is not well taken since these other references are not cited to teach that limitation. Van Sant does.

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Art Unit 3764